

7. The parties stipulated that LaMar received treatment for the anxiety from July 13, 2017 through December 8, 2017. Tr. 8-9.

8. On or about June 20, 2019, LaMar submitted a rental application for Orchard Apartments via Shaool Management's website. C.E. 1.

9. On the application, LaMar indicated that she had a "Lab Mix." *Id.*

10. Sometime after June 20, 2019, Nicole Jones, an employee of Shaool Management and Orchard Apartment's property manager, contacted LaMar to inform her that her rental application had been approved. Tr. 20.

11. Shortly after informing LaMar that her application had been approved, Nicole Jones called LaMar to rescind the offer for an apartment at Orchard Apartments. *Id.*

12. Nicole Jones told LaMar that the reason for the rescission was that her dog, a Lab-Pit Bull mix, was considered an aggressive breed. Tr. 21.

13. On or about July 25, 2019, LaMar mailed Respondents a letter requesting that the Respondents waive the breed restriction as a reasonable accommodation because her dog was a support animal. Tr. 26-7. *See* C.E. 3.

14. LaMar's July 25, 2019, letter included a note, dated November 13, 2017, from Morgan Hippenstiel, LaMar's treatment provider. *Id.*

15. Respondents did not respond to the July 25, 2019 letter. Tr. 27.

16. LaMar filed a verified Complaint with the Pennsylvania Human Relations Commission (PHRC) at PHRC case number 201901485 on or about August 16, 2019. O.D.

17. Respondents filed an Answer on or about October 21, 2019. O.D.

18. On or about March 24, 2021, LaMar filed an Amended Complaint with the PHRC to clarify and or amplify the claims set forth in the initiating Complaint. O.D.

19. On or about April 20, 2021, Respondents filed an Answer to the Amended Complaint with the PHRC. O.D.
20. On or about September 12, 2021, LaMar filed a Second Amended Complaint with the PHRC to further clarify and or amplify the claims set forth in the initiating Complaint. C.E. 5.
21. On or about October 15, 2021, Respondents filed an Answer to the Second Amended Complaint with the PHRC. C.E. 4.
22. A Public Hearing was held virtually on June 9, 2022. Tr. 1.

CONCLUSIONS OF LAW

1. The Pennsylvania Human Relations Commission (PHRC) has jurisdiction over the parties and the subject matter of these consolidated cases.

2. The parties and the PHRC have fully complied with the procedural prerequisites to convene a Public Hearing.

3. At all times relevant, LaMar is a person within the meaning of the Pennsylvania Human Relations Act. (PHRA).

4. At all times relevant, BH 36 LLC, and Ben Shaool Construction d/b/a Shaool Management, Inc. was a person within the meaning of the PHRA.

5. To prevail on a denial of a reasonable accommodation claim, LaMar must prove by a preponderance of the evidence that:

(a) she is a person with a disability;

(b) Respondents knew or reasonably should have known that she is a person with a disability;

(c) she requested an accommodation in the rules, policies, practices, or services of Respondents;

(d) the requested accommodation may be necessary to afford her an equal opportunity to use and enjoy the dwelling; and

(e) Respondents refused her request to make such accommodation.

6. To prevail on her claim that the Respondents made housing unavailable to her because of her disability, LaMar must show that the Respondents' refusal to rent to her was based on her disability.

7. LaMar failed to prove that she is a person with a disability within the meaning of the PHRA because she failed to establish that her anxiety substantially limits her in one or

more major life activities or that she has a record of having such an impairment; or that she [was] . . . regarded as having such an impairment.

8. Since LaMar failed to prove she had a disability, a requisite element of both claims, the Complaints should be dismissed.

OPINION

These consolidated cases arise out of Complaints filed by Katrina LaMar (LaMar) against BH 36, LLC (BH 36) and Ben Shaool Construction, Inc. d/b/a Shaool Management, Inc. (Shaool Management and collectively Respondents). The underlying facts are not in dispute and follow.

LaMar was diagnosed with generalized anxiety in July 2017. Tr. 29. The parties stipulated that LaMar received treatment for the anxiety from July 13, 2017 through December 8, 2017. Tr. 8-9. On or about June 20, 2019, LaMar submitted a rental application for Orchard Apartments. C.E. 1. Respondents own and manage Orchard Apartments. Tr. 79.

On the application, LaMar indicated that she had a “Lab Mix.” C.E. 1. Sometime after June 20, 2019, Nicole Jones, an employee of Shaool Management and Orchard Apartment’s property manager, contacted LaMar to inform her that her rental application had been approved. Tr. 20. Shortly after informing LaMar that her application had been approved, Nicole Jones called LaMar to rescind the offer for an apartment at Orchard Apartments. *Id.* Nicole Jones told LaMar that the reason for the rescission was that her dog, a Lab-Pit Bull mix, was considered an aggressive breed. Tr. 21. On or about July 25, 2019, LaMar mailed Respondents a letter requesting that they waive the breed restriction as a reasonable accommodation so her dog could live with her because he was her “support dog.” C.E. 3 and Tr. 25-6. LaMar’s July 25, 2019 letter included a note, dated November 13, 2017, from Morgan Hippenstiel, her treating physician. C.E. 3. Respondents did not respond to the July 25, 2019 letter. Tr. 27.

LaMar filed her first Complaint with the Pennsylvania Human Relations Commission (PHRC) on or about August 16, 2019, at PHRC case number 201901485. LaMar filed two Amended Complaints. However, the allegations in the Complaints did not substantially change. Generally, LaMar’s Complaints allege; one, that Respondents failed to

provide her a reasonable accommodation for her disability; and two, made housing unavailable to her because of her disability.

PHRC staff investigated the Complaints and found probable cause to credit LaMar's allegations of discrimination. The PHRC and the parties attempted to resolve the case through conference, conciliation and persuasion. The efforts were unsuccessful, and the case was approved for a public hearing. The parties waived their right to an in-person hearing and the hearing was held virtually on June 9, 2022, before Darlene Hemerka, Permanent Hearing Examiner. Robert Taylor, Esquire, presented the Commonwealth's interest in LaMar's Complaint. J. McDowell Sharpe, Esquire, represented Respondents. The parties submitted post-hearing briefs in August 2022.

The Pennsylvania Human Relations Act (PHRA) states that it shall be an unlawful discriminatory practice "for any person to: refuse to make reasonable accommodations in rules, policies, practices or services when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a housing accommodation." 43 P.S. § 955(h)(3.2). This statutory provision is supplemented by a regulation found at 16 Pa. Code § 45.5(b) which states:

A person may not deny a person with a handicap or disability the opportunity to use, enjoy or benefit from housing accommodations or commercial property subject to the coverage of the act if a basis of the denial is the need for reasonable accommodations. (1) A person may not refuse to make reasonable accommodations in rules, policies, practices and procedures when the accommodation may be necessary to afford a person with a handicap or disability equal opportunity to use and enjoy a dwelling unit, including public and common use areas.

The PHRA also states that it shall be an unlawful discriminatory practice “for any person to: refuse to...lease...or otherwise deny or withhold housing accommodations...from any person because of the...handicap or disability of any person...” 43 P.S. § 955(h)(1).

Under the PHRA, the term handicap or disability, with respect to a person, means:

- (1) a physical or mental impairment which substantially limits one or more of such person’s major life activities;
- (2) a record of having such an impairment; or
- (3) being regarded as having such an impairment... 43 P.S. 954 p.1.

This provision is also supplemented by regulations. The regulations state handicapped or disabled person includes the following:

- (i) A person who has or is one of the following:
 - (A) A physical or mental impairment, which substantially limits one or more major life activities.
 - (B) A record of such impairment.
 - (C) Regarded as having such an impairment.
- (ii) As used in subparagraph (i) of this paragraph, the phrase:
 - (A) “physical or mental impairment” means a physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine or mental or psychological disorder, such as mental illness, and specific learning disabilities.

(B) “major life activities” means functions such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(C) “has a record of such impairment” means has a history of or has been misclassified as having a mental or physical impairment that substantially limits one or more major life activities.

(D) “is regarded as having such an impairment” means has a physical or mental impairment that does not substantially limit major life activities but that is treated by an employer or owner, operator, or provider of a public accommodation as constituting such a limitation; has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or has none of the impairments defined in subparagraph (i)(A) of this paragraph but is treated by an employer or owner, operator, or provider of a public accommodation as having such an impairment. 16 Pa. Code § 44.4.

Pennsylvania courts generally interpret the PHRA “as identical to federal anti-discrimination laws except where there is something specifically different in its language requiring that it be treated differently.” *Fair Hous. Rights Ctr. v. Morgan Props. Mgmt. Co., LLC*, No. 16-4677, 2017 U.S. Dist. LEXIS 55249, at *8 n.2 (E.D. Pa. Apr. 11, 2017). The PHRA and Americans With Disabilities Act (ADA) are interpreted in a coextensive manner. This practice occurs because the PHRA and ADA deal with similar subject matter and are grounded on similar legislative goals. *Kelly v. Drexel University* 907 F.Supp. 864, 874 (E.D.Pa.1995).

In this case, the language of § 5(h)(3.2) of the PHRA is identical to that in § 804(f)(3)(B) of the Fair Housing Act (FHA). 42 U.S.C. § 3601. To establish a violation of § 5(h)(3.2) of the

PHRA, LaMar must show that (1) she is a person with a disability; (2) Respondents knew or reasonably should have known that she is a person with a disability; (3) she requested an accommodation in the rules, policies, practices, or services of Respondents; (4) the requested accommodation may be necessary to afford her an equal opportunity to use and enjoy the dwelling; and (5) Respondents refused her request to make such accommodation or failed to respond or delayed responding to the request such that it amounted to a denial. *United States v. Cal. Mobile Home Park Mgmt. Co.*, 107 F.3d 1374, 1380 (9th Cir. 1997).

The first thing LaMar must establish is that she is a person with a disability. The parties disagree whether LaMar's anxiety is a physical or mental impairment that substantially limits a major life activity. Courts look to the following factors to determine whether an impairment substantially limits a major life activity; the nature and severity of the impairment; the duration or expected duration of the impairment; and the permanent or long-term impact, or the expected permanent or long-term impact of or resulting from the impairment. *See Toyota Motor Mfg., Ky. v. Williams*, 534 U.S. 184, 196.

LaMar testified that she has generalized anxiety and that she was diagnosed in July of 2017. Tr. 28-9. Regarding how the anxiety impacts her, LaMar testified that she isolates herself, is fearful and has heart palpitations. Tr. 31. She further testified that she gets headaches, has trouble sleeping and experiences a loss of appetite. *Id.* LaMar also testified that she was prescribed medication. Tr. 29. However, the testimony failed to explain the frequency, severity or duration of LaMar's symptoms. It is unclear if LaMar suffered from these symptoms daily, weekly or only when stressed. LaMar testified that after the Respondents rescinded the apartment she did not have a place to live and that made her anxiety a lot worse. Tr. 32-3. This testimony showed that the severity of LaMar's anxiety fluctuated. Regarding other evidence about the anxiety, LaMar submitted a note from her treating

provider, Morgan Hippenstiel, C.E. 3. However, the Hearing Examiner gave the note no weight for two reasons. First, the note was dated almost 19 months before LaMar applied for the apartment in this case. This time period is significant because LaMar's testimony showed that the severity of her anxiety fluctuated. Current documentation would be needed to see if the anxiety was substantially limiting a major life activity in June 2019 when she applied for the apartment with Respondents. Second, the note was not specific enough. The note said, "The above patient is currently under my care. She is struggling with generalized anxiety and would benefit from an emotional support animal. If you have any further questions or concerns, do not hesitate to contact me. Thank you." C.E. 3. The note did not describe the nature or severity of LaMar's anxiety. It did not explain how long the provider had been treating LaMar for anxiety or how long LaMar had anxiety. Additionally, the note did not explain how the anxiety was impacting LaMar's life or how an emotional support animal would reduce the impact. Finally, the note did not say the doctor was prescribing an emotional support animal, instead it simply said LaMar would benefit from one. For these reasons, the Hearing Examiner did not give the note any weight. Since LaMar's testimony failed to specify the frequency duration and severity of the anxiety and the Hearing Examiner gave no weight to the doctor's note, the Hearing Examiner finds that LaMar failed to prove she had a disability and thus is not entitled to relief on the reasonable accommodation claim.

LaMar's second claim is that the Respondents made housing unavailable to her because of her disability. When analyzing discrimination claims, courts often rely on the framework set forth in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792. However, the Supreme Court has cautioned that this framework was never meant to be rigid. *Furnco Constr. Corp. v. Waters*, 438 U.S. 567, 575. The method suggested in *McDonnell Douglas* is a way to evaluate the evidence on the critical question of discrimination. *Id* at 577. Under *McDonnell Douglas*, a plaintiff has the

initial burden of showing actions taken by the defendant from which one can infer, if the actions remain unexplained, that it is more likely than not that such actions were based on a discriminatory criterion. *Id.*

Applying this principal to LaMar's refusal to rent claim, LaMar must establish that Respondents' refusal was based upon her disability.² This claim should be dismissed since LaMar failed to establish she had a disability as discussed above.

² The Hearing Examiner decided not to list elements for the refusal to rent claim because she could find no case law with binding authority on the issue and cases that could be used for persuasive authority articulated different elements. See *Castillo Condo. Ass'n v. United States HUD*, 821 F.3d 92, (1st Cir. May 2, 2016) *Wartluft v. Milton Hershey Sch. & Sch. Trust*, 400 F. Supp. 3d 91 and *Fair Hous. Justice Ctr., Inc. v. Cuomo*, 2019 U.S. Dist. LEXIS 170119.

**COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE
PENNSYLVANIA HUMAN RELATIONS COMMISSION**

Katrina LaMar	:	
Complainant	:	
	:	PHRC Case No. 201901485
v.	:	
	:	HUD No. 03-19-3253-8
BH 36, LLC, Ben Shaool Construction, Inc., d/b/a Shaool Management, Inc.	:	
	:	
Respondents	:	

RECOMMENDATION OF THE PERMANENT HEARING EXAMINER

Upon consideration of the entire record in the above-captioned matter, the Permanent Hearing Examiner finds that LaMar has failed to prove she was discriminatorily denied an accommodation, or that she was denied housing in violation of Section 5(h) of the PHRA. It is, therefore, the Permanent Hearing Examiner's recommendation that the attached Findings of Fact, Conclusions of Law, and Opinion be approved and adopted. If so, approved and adopted, the Permanent Hearing Examiner further recommends issuance of the attached Final Order.

PENNSYLVANIA HUMAN RELATIONS COMMISSION

Darlene Hemerka

Darlene Hemerka, Hearing Examiner

Dated: September 28, 2022

**COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE
PENNSYLVANIA HUMAN RELATIONS COMMISSION**

Katrina LaMar	:	
Complainant	:	
	:	PHRC Case No. 201901485
v.	:	
	:	HUD No. 03-19-3253-8
BH 36, LLC, Ben Shaool Construction, Inc., d/b/a Shaool Management, Inc.	:	
	:	
Respondents	:	

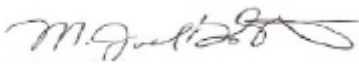
FINAL ORDER

AND NOW THIS 24th day of October 2022, after a review of the entire record in this matter, the Pennsylvania Human Relations Commission, pursuant to Section 9 of the Pennsylvania Human Relations Act, hereby approves the foregoing Findings of Fact, Conclusions of Law, and Opinion of the Permanent Hearing Examiner. Further, the Commission adopts said Findings of Fact, Conclusions of Law, and Opinion into the permanent record of this proceeding, to be served on the parties to the Complaints and hereby


ORDERS

1. That the Complaints in these cases be, and the same hereby are dismissed.

PENNSYLVANIA HUMAN RELATIONS COMMISSION

By: 
M. Joel Bolstein

Attest:


o/b/o Commissioner Mayur Patel